

RYAN, PHILLIPS, UTRECHT & MACKINNON*

ATTORNEYS AT LAW
• Nonlawyer Partner

1133 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20036

(202) 293-1177
Facsimile (202) 293-3411

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February 23, 2007

Mark Allen, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: **MUR 5542**
Texans for Truth

Dear Mr. Allen,

This supplemental response is submitted on behalf of Texans for Truth ("TFT") to the brief of the Office of General Counsel ("OGC"). OGC has recommended that the Commission find probable cause to believe that TFT violated various provisions of FECA from its activities prior to Election Day in 2004. TFT submitted a Response to the Brief of the General Counsel in MUR 5542 on January 31, 2007. In its response, TFT argues that OGC erred in its assertions that TFT was a political committee subject to FECA limits with regard to "contributions" based primarily on the erroneous assertion that TFT solicited federal contributions, due to the improper retroactive application of the Commission's new solicitation regulation at 11 C F R § 100.57.

On February 7, 2007, the Commission released a Supplemental Explanation & Justification ("E & J") of its decision declining to issue a new rule regarding political committee status under the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act"). As set forth below, the statements made by the Commission in this E & J bolster TFT's response and compel a finding of no probable cause in this MUR. The E & J confirms that the solicitation rule which OGC uses as support for its conclusion that TFT raised "contributions" was new and was not in effect for the 2004 cycle.

A. The Revised Explanation and Justification Establishes That the Commission Rules Are New and Can Therefore Only Be Applied Prospectively.

In the E & J, the Commission stated that, in November 2004, it adopted a new regulation explaining when an organization's solicitations generate "contributions" under the Act, bringing certain I R C. §527 political organizations within the scope of FECA. Specifically, in the E & J, the Commission states that, "[o]n November 23, 2004, following an extensive rulemaking process, the Commission adopted *new* regulations to ensure that organizations that participate in Federal elections conduct their activities in compliance with Federal law." 72 Fed. Reg. 5596 (Feb. 7, 2007) (clarifying 11 C F R §100) (emphasis added). The Final Rules on Political Committee Status, Definition of Contribution, and Allocation for Separate Segregated Funds and Nonconnected Committees, 69 Fed. Reg. 68056, 68056-63 (Nov. 23, 2004) ("2004 Final Rules") took effect on Jan. 1, 2005.

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The Commission repeatedly states in the revised E & J that this regulation is new. In fact, the revised E & J states twenty-eight times that these rules are new. While the E & J clearly states that these regulations were not in effect until they were adopted on November 23, 2004 (the E&J for §100.57 states it was effective January 1, 2005), OGC uses these "new" solicitation provisions in its Brief in analyzing TFT's activities, all of which pre-date the adoption of the rules.¹

Despite the fact that the FEC has twice published an E & J stating that these regulations are new, OGC advocates their retroactive application to TFT. This is fundamentally unfair and a violation of due process. While the Commission argues strongly in the revised E & J that it is important for the regulated community to have clear guidance, the retroactive application of a new rule could not possibly be said to provide guidance to regulated entities regarding their past activity. TFT's activities in 2004 must be governed by then-existing regulations which did not include any provision such as §100.57. Thus, the supplemental E & J provides additional support for the Commission to find no probable cause that TFT violated any provision of the Act.

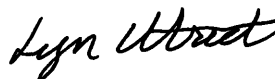
B. Conclusion

For the reasons stated in our Brief filed on January 31, 2007, we respectfully request that the Commission find no probable cause that TFT violated the Act and close the file in this matter. We believe that the additional reasoning provided herein, as a result of the Commission's own supplemental E & J, even more forcefully compels this conclusion.

Respectfully submitted,



Eric Kleinfeld



Lyn Utrecht



Patricia Fiori



Karen Zeglis

Ryan, Phillips, Utrecht & MacKinnon
1133 Connecticut Avenue, NW
Suite 300
Washington, DC 20036

Counsel for Texans for Truth

¹ The only support cited by OGC for its application of this solicitation standard is *Survival Education Fund*. As set forth in our Response Brief at Section III(A)(2), that case does not support OGC's analysis.

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